

November 9, 2011

Mark A. Kudler
President
Bulletin Displays, LLC
3127 E. South Street, Ste B
Long Beach, CA 90805

Re: Your Request for Advice
Our File No. A-11-196

Dear Mr. Kudler:

This letter responds to your request for advice regarding the campaign reporting provisions of the Political Reform Act (the "Act").¹ Please be aware that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions provided apply only to prospective actions.

QUESTION

Are you required under the Act to file a report disclosing payments for a billboard that identifies or features Assemblymember Isadore Hall but does not expressly advocate his election if the billboard is removed 45 days before an election where he is a candidate?

CONCLUSION

Under the facts presented, all the elements of Section 85310 would not be met. Therefore you would not be required under the Act to file an electronic E-530 report disclosing payments for the communication that identify or feature Assemblymember Hall but do not expressly advocate for his election.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are president of a creative outdoor advertising company. You were involved in the creation of billboards for several members of the California Assembly who placed their photos on the billboards and encouraged the public to participate in the last census. You stated that the advertising was removed within 45 days of each member's election and therefore, the billboards were not reported as contributions or donations to the members.

You did a public service announcement billboard for Assemblymember Hall. It has the Assemblymember's picture prominently displayed on the left hand side and it states, "Thank You from Assemblymember Isadore Hall to those that help make our community safe!"

You wish to know if you must file a report disclosing payments for this communication that identifies or features Assemblymember Hall but does not expressly advocate his election if the billboard is removed 45 days before an election where he is a candidate.

ANALYSIS

Section 85310 states that:

"(a) Any person who makes a payment or a promise of payment totaling fifty thousand dollars (\$50,000) or more for a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast or otherwise published within 45 days of an election, shall file online or electronically with the Secretary of State a report disclosing the name of the person, address, occupation, and employer, and the amount of the payment. The report shall be filed within 48 hours of making the payment or the promise to make the payment."

Therefore, the requirements of Section 85310 are triggered and a Form E-530 must be filed online with the Secretary of State's office² within 48 hours of the payment being made or promised if:

- Anyone spends or promises to pay \$50,000 or more for a communication disseminated within 45 days of an election *and*
- The communication clearly identifies a candidate for state elective office but does not expressly advocate the election or defeat of that candidate. (Section 85310, Regulation 18539.2)

² Please refer to the California Secretary of State's website: www.sos.ca.gov.

You did not provide a dollar amount for the billboard, but if it meets the \$50,000 threshold in Section 85310, then the requirements of Section 85310 may apply. However, your facts suggest that you plan to remove the billboard within 45 days prior to an election where Assemblymember Hall is a candidate. If this is the case, then not all the elements of Section 85310 would be met. Therefore you would not be required under the Act to file an electronic E-530 report disclosing payments for the communication that identify or feature Assemblymember Hall but do not expressly advocate for his election.

We have enclosed our Fact Sheet, "E-530 Instructions: Communications Identifying Candidates Issue Advocacy – State Candidates" for more detailed information.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

Enclosure